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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,856	10/15/2003	Christian Wolf	DT-6643	1730
30377	7590	06/15/2005	EXAMINER	
DAVID TOREN, ESQ. SIDLEY, AUSTIN, BROWN & WOOD, LLP 787 SEVENTH AVENUE NEW YORK, NY 10019-6018			SORKIN, DAVID L	
		ART UNIT	PAPER NUMBER	
		1723		

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/686,856	WOLF ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	David L. Sorkin	1723

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03 June 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-12 is/are rejected.

7)  Claim(s) 13 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03 June 2004

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, it is unclear what, if any, structural limitation is implied by "is reduced", reduced with respect to what? Regarding claim 9, there is lack of antecedent basis for "the at least one of the cylindrical or half-cylindrical body". It is unclear the these shapes are requires aspects of the claimed structure.

Should claim 9 depend from claim 6, which provides antecedent basis for these terms?

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Noma (US 3,875,060). Regarding claim 1, Noma ('060) discloses a mixing element formed of a plurality of components, comprising an input opening (for example 13a, but could also be 12a or 23a or 20)), an outlet opening (for example 12a, but could also be 13a or 23a); a flow channel provided between the inlet and outlet wherein the direction of flow run essentially orbitally to a longitudinal axis of the element (see Fig. 2; col. 4,

lines 55-68). Regarding claim 2, the flow channel defines a substantially circular direction of flow within a mixing plane (see Fig. 2). Regarding claim 3, a plurality of deflection elements (17, 18) are arranged in the mixing plane. Regarding claim 4, the flow channel is guided over a plurality of mixing planes (see Figs. 2 and 3). Regarding claim 5, the mixing planes are connected in series (see Fig. 2). Regarding claim 6, the mixing element comprises a cylindrical body (11). Regarding claim 7, the input and output openings (for example 13a and 23a) are arranged on one axis (see Figs. 3 and 4). Regarding claim 8, a height of the flow channel is reduced (see Figs. 3 and 4). Regarding claim 10, the mixing element is arranged on a fastening plate (for example 12 or 13) that can be fastened to a construction component. Regarding claim 12, "The patentability of a product does not depend on its method of production" *In re Thorpe* 227 USPQ 964, 966 (Fed. Cir. 1985).

5. Claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Botrie (US 4,676,657). Regarding claim 1, Botrie ('657) discloses a mixing element formed of a plurality of components, comprising an input opening (for example 156), an outlet opening (for example 158); a flow channel (51) provided between the inlet and outlet wherein the direction of flow run essentially orbitally to a longitudinal axis of the element (see Figs. 2 and 3). Regarding claim 2, the flow channel defines a substantially circular direction of flow within a mixing plane (see Figs. 2 and 3). Regarding claim 3, a plurality of deflection elements (604) are arranged in the mixing plane. Regarding claim 4, the flow channel is guided over a plurality of mixing planes (see Fig. 9). Regarding claim 5, the mixing planes are connected in series (see Figs. 2 and 9). Regarding claim

6, the mixing element comprises a cylindrical body (see Figs. 2 and 3). Regarding claim 7, the input and output openings are arranged on one axis (see Figs. 2 and 4). Regarding claim 8, a height of the flow channel is reduced (see drawings). Regarding claim 10, the mixing element is arranged on a fastening plate (see Fig. 2) that can be fastened to a construction component. Regarding claim 11, the mixing element is manufactured from plastic (see col. 4, line 28; col. 6, line 34). Regarding claim 12, "The patentability of a product does not depend on its method of production" *In re Thorpe* 227 USPQ 964, 966 (Fed. Cir. 1985).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noma (US 3,875,060) in view of Botrie (US 4,676,657). The element of Noma ('060) discussed above is not disclosed as made of plastic. Botrie ('657) teaches making a mixing element of plastic (see col. 4, lines 28-31). It is considered that it would have been obvious to one of ordinary skill in the art to make the mixing element of Noma ('060) of plastic because Botrie ('657) explains that plastic is a suitable material for mixing elements and is an alternative to other materials (see col. 4, lines 28-31).

***Allowable Subject Matter***

8. Claim 9 would be allowable if rewritten to overcome the corresponding rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS